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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. REUBEN ALLAN KALEIMAMAHU, Defendant and Appellant.	G050641 (Super. Ct. No. 95NF1607) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Gary S. Paer, Judge. Affirmed.

Robert L. S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Lynne G. McGinnis and Eric A. Swenson, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

In 1995, defendant Reuben Allan Kaleimamahu pleaded guilty to making terrorist threats (Pen. Code, § 422)[1] and possession of a firearm by a felon (former § 12021, subd. (a), now § 29800, subd. (a)) and admitted two prior strikes in return for an indeterminate prison sentence of 25 years to life. He was sentenced in accordance with the plea bargain.

"On November 6, 2012, the electorate passed Proposition 36, the Three Strikes Reform Act of 2012." (*People v. Johnson* (2015) 61 Cal.4th 674, 679 (*Johnson*).) On November 7, 2012, section 1170.126 became effective pursuant to the Three Strikes Reform Act of 2012, and "'created a postconviction release proceeding whereby a prisoner who is serving an indeterminate life sentence imposed pursuant to the three strikes law for a crime that is not a serious or violent felony and who is not disqualified, may have his or her sentence recalled and be sentenced as a second strike offender unless the court determines that resentencing would pose an unreasonable risk of danger to public safety.'" (*People v. Nettles* (2015) 240 Cal.App.4th 402, 404, italics omitted.)

In July 2014, defendant petitioned for recall of his sentence and for resentencing under section 1170.126, contending that the offense of making terrorist threats was not a serious or violent felony in 1995, when he was sentenced for the offense. The court dismissed defendant's petition on the ground that a section 422 offense is a serious felony.

Defendant's sole contention on appeal is that the court should have granted his petition for recall of his sentence because he "committed his offenses in 1995 and only in 2000 did the Legislature deem terrorist threats a serious felony." In *Johnson*, our Supreme Court addressed, "for purposes of resentencing a defendant[,] whether the classification of an offense as a serious or violent felony is determined as of November 7, 2012, the effective date of Proposition 36, or the law in effect when the offense was

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1 All statutory references are to the Penal Code.

committed." (*Johnson, supra*, 61 Cal.4th at p. 679.) *Johnson* held that "when a court resentences a third strike defendant the classification of the current offense is based on the law as of the effective date of Proposition 36." (*Ibid.*)

Accordingly, the court properly dismissed defendant's petition for resentencing under section 1170.126 because the offense of making criminal threats was a serious felony as of the date section 1170.126 became effective, i.e., November 7, 2012. (§ 1192.7, subd. (c)(38) [added pursuant to Prop. 21, as approved by voters, Gen. Elec. (Mar. 7, 2000)].) Accordingly we affirm the postjudgment order.

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IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.